

Coachlight Dinner Theater, Inc. and American Federation of Musicians, Local 400. Case 34-CA-5969

April 22, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed by the Union December 30, 1992, a first amended charge filed February 2, 1993, and a second amended charge filed February 11, 1993, the General Counsel of the National Labor Relations Board issued a complaint, compliance specification, and notice of hearing against Coachlight Dinner Theater, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act and setting forth the amount of money owed as a result of the unfair labor practice. Although properly served copies of the charge, amended charges, complaint, and compliance specification, the Respondent has failed to file an answer.

On March 22, 1993, the General Counsel filed a Motion for Summary Judgment and for issuance of Board Decision and Order, with exhibits attached. On March 23, 1993, the Board issued an order transferring the proceeding to the Board and a notice to show cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the complaint and compliance specification states that unless an answer is filed within 21 days of service, "all the allegations in the complaint shall be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the regional attorney, by letter dated March 1, 1993, notified the Respondent that unless an answer to the complaint was received by close of business March 8, 1993, a Motion for Summary Judgment would be filed. In addition, by letter dated March 5, 1993, the Respondent was advised that if no answer to the complaint and compliance specification was received by March 12, 1993, the Regional Office would seek summary judgment based on Respondent's failure to respond to all allegations in the complaint and compliance specification. The Respondent failed to file an answer.

On March 1, 1993, a letter from Respondent's counsel of record, dated February 25, 1993, was received

at the Regional Office, which letter appears to be in response to the first amended charge, informing the Region, inter alia, that Respondent is in bankruptcy, but which fails to serve as an answer. On March 5, 1993, a letter from another counsel, dated March 4, 1993, informing the Region that Respondent had filed a bankruptcy petition and was no longer in business, was received in the Regional Office.

It is well established, however, that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

Accordingly, in the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Connecticut corporation with an office and place of business in East Windsor, Connecticut, has been engaged in the operation of a restaurant and theater. During the 12-month period ending December 31, 1991, Respondent, in conducting its business operations, derived gross revenues in excess of \$500,000 and purchased and received at its facility goods valued in excess of \$5000 directly from points located outside the State of Connecticut. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All musicians employed by Respondent.

Since about 1982 and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from October 1, 1989, until September 30, 1991.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since July 1992, Respondent has failed to pay vacation benefits to employees in the unit as required by

article M, section 8(a) of the collective-bargaining agreement. This matter relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for purposes of collective bargaining. Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

CONCLUSIONS OF LAW

1. By the conduct described above, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. The net backpay due the employees is as stated in the complaint and compliance specification.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We will order Respondent to make whole the individuals named in the complaint and compliance specification by paying them the amounts specified there, plus interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws.

ORDER

The National Labor Relations Board orders that the Respondent, Coachlight Dinner Theater, Inc., Warehouse Point, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of our employees by failing to pay vacation benefits to employees in the unit as required by article M, section 8(a) of the collective-bargaining agreement without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct or the effects of this conduct.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the individuals named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173

(1987), minus tax withholdings required by Federal and state laws:

Richard DeRosa (Conductor)	\$1,347.58
Robert Macnamie (Musician)	831.52
Richard Zalmer (Musician)	831.52

(b) Mail an exact copy of the attached notice marked "Appendix"¹ to the American Federation of Musicians, Local 400 and to all employees of the unit who were employed by Respondent at its Warehouse Point, Connecticut facility. Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt thereof as here directed.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees by failing to pay vacation benefits to employees in the unit as required by article M, section 8(a) of the collective-bargaining agreement without prior notice to the Union and without affording the Union an opportunity to bargain with it with respect to this conduct or the effects of this conduct.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL pay the following individuals the amounts following their names, plus interest accrued to the date of such payment:

Richard DeRosa	\$1,347.58
Robert Macnamie	831.52

Richard Zalmer	831.52
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COACHLIGHT DINNER THEATER, INC.